

Waste Evaluation and Enforcement Branch Staff Report

Summary of the Unincorporated County of Merced Compliance Review and Consideration of the Issuance of Compliance Order CO 017-005

SUMMARY

The Department of Resources Recycling and Recovery (Department) conducted a review of the Unincorporated County of Merced's (Merced-Unincorporated) implementation of, and compliance with, California's Recycling of Commercial Solid Waste Law, referred to as the Mandatory Commercial Recycling (MCR) law (California Public Resources Code (PRC) sections 42649-42649.7 and California Code of Regulations (CCR) sections 18835-18839). PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its MCR program. The evaluation of good faith includes, but is not limited to, the factors found in PRC section 42649.3 (i)((1)-(7)).

Based on the Jurisdiction Compliance Unit (JCU) staff's observations, the following key deficiencies, as well as other details described in the report demonstrate that Merced-Unincorporated has not made a good faith effort to comply with the requirements of the MCR law.

- Merced-Unincorporated did not implement a commercial solid waste recycling program that was designed to divert commercial solid waste from businesses within Merced-Unincorporated, which are subject to PRC section 42649.2 and CCR section 18837.
- Merced-Unincorporated did not provide documentation supporting the efforts it has taken to notify businesses and multi-family complexes of noncompliance with the MCR law (PRC section 42649 (i)(4) and CCR section 18838 (a)(2)).
- Merced-Unincorporated's Annual Reports for 2012, 2013, 2014, and 2015 submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law (PRC section 42649.3 (g) and CCR section 18838 (h)). Follow-up inquiries by Local Assistance and Market Development (LAMMD) Division and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that Merced-Unincorporated made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring

Based on JCU staff's review and analysis, JCU staff recommends that a Compliance Order (CO) be issued. As part of the CO, Merced-Unincorporated would be directed to develop a Local Implementation Plan (LIP). The LIP will identify a strategy for program enhancements, and local actions necessary to enable Merced-Unincorporated to meet the requirements of the MCR law.

JURISDICTION COMPLIANCE HISTORY

Merced-Unincorporated does not have any prior CO's, nor has it filed for extensions to improve diversion programs to meet the diversion requirement of PRC 41780.

Based on historical records and previous findings, Merced-Unincorporated was included in the four-year Jurisdiction Review cycle.

BACKGROUND

Statutory Requirements for Department Review and Enforcement Action

PRC section 42649.3 requires that on and after July 1, 2012, each jurisdiction shall implement a commercial solid waste recycling program appropriate for that jurisdiction designed to divert commercial solid waste from businesses subject to PRC section 42649.2, whether or not the jurisdiction has met the requirements of PRC section 41780. Each jurisdiction is also required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts, by providing updates in the Annual Report required by PRC section 41821.

PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program in accordance with the MCR law (PRC section 42649.3(i)).

Pursuant to PRC section 42649.3(g), the Department is to review a jurisdiction's compliance with the MCR law as part of the Jurisdiction Review required by PRC section 41825. The Department may also evaluate whether a jurisdiction is in compliance at any time that the Department receives information that the jurisdiction has not implemented, or is not making a good faith effort to implement its commercial recycling program (PRC section 42649.3(h)).

In determining whether the jurisdiction has made a good faith effort to comply with the requirements of the MCR law, the Department's evaluation may include, but is not limited to, the following factors:

- The extent to which businesses have arranged for recycling services in compliance with PRC Section 42649.2, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to recycling services;
- The recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses;
- The extent to which the jurisdiction is conducting education and outreach to businesses;
- The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance;
- The availability of markets for collected recyclables;
- Budgetary constraints; and
- For rural jurisdictions, the effects of small geographic size, low population density or distance to markets.

The Department is also required to consider the enforcement criteria included in its enforcement policy that was amended and approved in June 2015 (PRC section 41825(e)(3)).

If the Department determines that the jurisdiction did not comply with, or make a good faith effort to comply with the MCR law, the Department may issue a Compliance Order.

Prior to issuing a notice of intent to issue a Compliance Order, PRC section 41825(c)(1) requires the Department to confer with the jurisdiction for at least 60 days regarding conditions relating to the proposed order of compliance.

If, after conferring with the jurisdiction, the Department makes a determination that a compliance order should be issued, PRC section 41825(c)(2) requires the Department to issue a notice of intent to issue a Compliance Order not less than 30 days prior to conducting the hearing to consider issuing the Compliance Order. At any time prior to the hearing, at the hearing, or after the hearing the Department may decide not to commence compliance action if it finds that the jurisdiction has made a good faith effort to implement the MCR law.

Fines of up to \$10,000 per day may be imposed if the provisions of the Compliance Order and schedule are not met by the jurisdiction (PRC section 41850).

The Department's Review Process

LAMD staff's 2012-2015 review determined that Merced-Unincorporated had gaps in its MCR implementation. Based on this determination, LAMD referred the jurisdiction to JCU for an independent Jurisdictional Review. On March 30, 2017, LAMD notified Merced-Unincorporated that an independent review of Merced-Unincorporated's MCR implementation was necessary (Attachment 1). On March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

JCU conducted an independent jurisdictional review, which extensively reviews and analyzes data and documentation to understand a jurisdiction's MCR implementation efforts. The review, included, but was not limited to:

- Communications with the jurisdiction (phone calls, emails, and letters) to learn about the community and the MCR program offered.
- Requesting approval from the jurisdiction to communicate with any of the hauler(s) (whether under contract or not) on behalf of the jurisdiction to obtain records related to, but not limited to, the total number of accounts serviced, and the total tons of collected recyclables and waste from the jurisdiction.
- Commercial cart and bin field evaluations.
- Observing and evaluating a jurisdiction's recycling and waste loads at the material recovery facility(s), transfer station(s), and landfill(s).
- Tracking efforts to amend or award franchise agreements or other contracts that can have an impact on a jurisdiction's implementation of the MCR program.

In March 2017, JCU began its independent review of Merced-Unincorporated's MCR program implementation, using available information from Merced-Unincorporated's Annual Reports, Department databases, and communications between the Department and Merced-

Unincorporated. This review focused on the commercial waste generators (as defined by PRC 42649.1 (c)) and multi-family residential complexes of five units or more and included visits with Merced County Regional Waste Management Authority staff and one of Merced-Unincorporated's haulers (Gilton Solid Waste Management).

Concurrently, since May 2017, Merced-Unincorporated has been working to identify businesses and multi-family complexes subject to MCR and to gather monitoring data to determine which accounts are recycling and which are non-compliant. Merced-Unincorporated mailed notifications of noncompliance letters and self-certification forms to businesses and multi-family complexes serviced by Waste Management on October 18, 2017. Waste Management mailed educational brochures on November 2, 2017. Merced-Unincorporated mailed notification of non-compliance letters, self-certification forms, and educational brochures to Gilton Solid Waste Management's noncompliant businesses and multi-family complexes on November 3 and 6, 2017.

ANALYSIS

Overview of Jurisdiction Demographics and Infrastructure

Existing Jurisdiction Conditions

Merced-Unincorporated is comprised of the unincorporated areas of Merced County. Merced-Unincorporated has a population of 94,578 (Department of Finance, 2017). Per PRC section 40970 et seq., cities and counties are authorized to form "regional agencies." Regional agencies are allowed to report program information and disposal numbers as one entity instead of by jurisdiction.

Merced-Unincorporated is a member of the Merced County Regional Waste Management Authority ("RWA") which formed in 1972 to manage the solid waste landfills. In 1995, through the RWA, a regional agency agreement was adopted to form the Merced County Solid Waste Regional Agency, to address the reporting requirements of the Integrated Waste Management Act. The regional agency includes the following jurisdictions:

- Atwater
- Dos Palos
- Gustine
- Livingston
- Los Banos
- Merced
- Merced-Unincorporated

Throughout JCU's review Merced-Unincorporated and RWA have worked together to respond to information requests.

Based on available records, in 2004 RWA's total waste generation from the non-residential waste stream was 82 percent, there is no waste generation data specific to Merced-Unincorporated.

Summary of Merced-Unincorporated's Solid Waste Infrastructure and Materials Flow

Participation in the waste collection services is not mandatory. Commercial businesses and multi-family complexes can elect to participate in the franchise services or self-haul their trash to the landfill (Merced County Code Chapter 9.08).

Merced-Unincorporated develops and awards its own franchise agreements and contracts for waste services. Merced-Unincorporated has two haulers providing commercial waste services: Waste Management and Gilton Solid Waste Management. Merced-Unincorporated's haulers handle materials in the following manner:

- **Waste Management:**
As part of the regional agency agreement between Merced-Unincorporated and the cities, franchise haulers must first haul waste and recycling loads to one of the two regional landfills owned by RWA. Waste and recyclables are hauled to Highway 59 Disposal Site, located in Merced. Waste is disposed of at Highway 59 Disposal Site while recyclables are consolidated and transferred to the contracted material recovery facility (MRF) Newby Island Resource Recovery Park, located in Milpitas.
- **Gilton Solid Waste Management (Gilton):**
Although a franchise waste hauler, the regional agency agreement specifically allows Gilton to transport the waste and recyclables collected directly to their own processing facility. Waste and recycling is hauled to Gilton Solid Waste Resource Recovery and Transfer Station, located in Modesto. Waste is then transferred to a trailer and disposed at Highway 59 Disposal Site, located in Merced. Recycling is shipped to available markets. American Recycling is a known third-party recycler operating within Merced-Unincorporated. Merced-Unincorporated informed JCU staff that it is working to identify other third-party recyclers.

Findings and Observations of the Jurisdiction's Mandatory Commercial Recycling Program

Below is a detailed analysis of Merced-Unincorporated's program, and Merced-Unincorporated's efforts to implement the program, the law and reporting requirements. The analysis includes the program deficiencies, which lead to the determination of good faith effort or lack thereof.

Commercial businesses that generate four (4) cubic yards or more of waste per week, and multi-family complexes of five (5) or more units must comply with the MCR law. Described below are staff's findings of what was found at both commercial businesses, multi-family complexes, and at the solid waste and recycling facilities accepting the materials produced by the jurisdiction. Since multi-family complexes are serviced on the same routes as businesses, the solid waste and recycling facilities analysis reflects what is happening with the MCR waste stream as a whole. JCU staff's field visit photo report (Attachment 3) contains visual documentation of many of the observations detailed below.

Commercial Business Diversion

About the Program and Efforts:

On-Site Collection: Participation in Merced-Unincorporated's commercial recycling program is voluntary. Merced-Unincorporated offers commingled and source separated recycling services through the franchise haulers. Third-party recycling companies also

operate within Merced-Unincorporated. Service frequency and bin size varies depending on an account's service needs. Materials accepted for recycling includes paper, cardboard, plastic, glass, metals, and bottles and cans.

Self-Haul: Businesses may self-haul recycling to drop-off centers located at the two landfills. Materials accepted for recycling include mixed paper, cardboard, plastic bottles/jugs, glass bottles/jars, metal containers, and clean aluminum foil. CRV buy-back centers are used by businesses to redeem self-hauled loads of CRV containers.

Recent Efforts by Merced-Unincorporated: Since March 2017, Merced-Unincorporated, the RWA and the haulers have worked together to discuss MCR program improvement. Merced-Unincorporated has been working to identify MCR businesses that subscribe to recycling service offered by third-party recyclers. Merced-Unincorporated also informed JCU staff that early in October 2017, Merced County's Director of Public Works approved funding to create a part-time staff position that will assist in implementing the MCR program. Funding was also approved to mail out MCR materials.

Merced-Unincorporated notified JCU staff that on October 18, 2017 they mailed notifications of noncompliance and self-certification forms to businesses and multi-family complexes serviced by Waste Management. On November 2, 2017 Waste Management followed up and mailed educational brochures to noncompliant customers. In early November 2017, Merced-Unincorporated also notified JCU staff that they mailed notifications of noncompliance, self-certification forms, and educational brochures to Gilton's noncompliant businesses and multi-family complexes. Results of these efforts were not provided to JCU prior to completion of this report.

Facts and Observations Related to On-Site Commercial Business Recycling Efforts:

- JCU staff analyzed the hauler lists provided by Merced-Unincorporated to determine the number of businesses subject to MCR. JCU's analysis determined that Merced-Unincorporated has 574 commercial solid waste collection accounts that meet the MCR definition of a business and are required to recycle under the MCR law. Out of the 574 accounts that are required to recycle, 53 accounts are recycling using the franchise haulers' recycling services, American Recycling (a third-party recycler), or self-hauling. This is a participation rate of 7.3 percent.
- JCU staff visited 53 businesses subject to MCR. Of the 53 businesses, JCU staff found that one (1) business had recycling service with a franchise hauler. JCU staff found less than five (5) percent contamination in the recycling bin observed. Of the 52 businesses without recycling service, staff observed 11 businesses setting out materials that included bailed cardboard, wood pallets, and other recyclables. Three (3) businesses reported by Merced-Unincorporated as recycling through setting out materials was confirmed in the field by JCU staff. The remaining businesses 38 observed did not have an identifiable means of recycling.
- Merced-Unincorporated reported that third-party recyclers, other than American Recycling, service MCR businesses, however, Merced-Unincorporated was not able to provide data on who these recyclers are or the number of MCR businesses that they

service. Without this information, JCU staff was not able to determine the impact this was having on Merced-Unincorporated's MCR program.

Facts and Observations Related to On-Site Commercial Business Waste Collection:

- JCU observed four (4) and six (6) cubic yard waste bins at different businesses throughout Merced-Unincorporated. Of the 53 businesses observed, staff noted that half of waste bins contained approximately 50 to 90 percent recyclables, most of which was cardboard. For businesses that set out recyclables for pick-up, most waste bins observed were locked so staff could not observe the contents. Of the four (4) businesses with observable waste bins, the percent of recyclables present ranged from less than five (5) percent to 70 percent. Staff was not able to determine why the wide range of recyclables in waste bins was occurring.

Multi-Family Complex Diversion

About the Program and Efforts:

On-Site Collection: Participation in Merced-Unincorporated's commercial recycling program is voluntary. Merced-Unincorporated offers commingled and source separated recycling services to multi-family complexes through the franchise haulers or third-party recycling companies. Materials accepted for recycling includes paper, cardboard, plastic, glass, metals, and bottles and cans.

Self-Haul: Residents may self-haul recycling to drop-off centers located at the two landfills. Materials accepted for recycling include mixed paper, cardboard, plastic bottles/jugs, glass bottles/jars, metal containers, and clean aluminum foil. CRV buy-back centers may be used to redeem self-hauled loads of CRV containers.

Recent Efforts by Merced-Unincorporated: Since March 2017, Merced-Unincorporated, RWA, and the haulers have worked together to discuss MCR program improvement. Merced-Unincorporated has been working to identify MCR multi-family complexes that subscribe to recycling service offered by third-party recyclers. Merced-Unincorporated also informed JCU staff that early in October 2017, Merced County's Director of Public Works approved funding to create a part-time staff position that will assist in implementing the MCR program. Funding was also approved to mail out MCR materials.

Merced-Unincorporated has reported that on October 18, 2017 they mailed notifications of noncompliance and self-certification forms to businesses and multi-family complexes serviced by Waste Management. On November 2, 2017 Waste Management followed up and mailed educational brochures to noncompliant customers. In early November, 2017 Merced-Unincorporated reported they mailed notification of noncompliance, self-certification forms, and educational brochures to Gilton's noncompliant businesses and multi-family complexes. Results of these efforts were not provided to JCU prior to completion of this report.

Facts and Observations Related to On-Site Multi-Family Complex Recycling Efforts:

- JCU staff analyzed the hauler lists provided by Merced-Unincorporated to determine the number of multi-family complexes subject to MCR. JCU's analysis determined that Merced-Unincorporated has 80 multi-family complexes that meet the MCR definition of a multi-family complex and are required to recycle under the MCR law. Out of 80 accounts that are required to recycle, two (2) accounts are subscribed to recycling service. This is a participation rate of 2.5 percent.
- Approximately 57 percent of the total multi-family accounts included on the hauler lists are agricultural accounts (farms and dairies) with farmhand tenant residences on the property.
- JCU staff visited eight (8) multi-family complexes subject to MCR. None of the multi-family complexes had recycle bins present.

Facts and Observations Related to On-Site Multi-Family Complex Waste Collection:

- JCU observed two (2) to six (6) cubic yard waste bins at multi-family complexes throughout Merced-Unincorporated. Of the 16 waste bins observed, half of the waste bins contained on average 50-60 percent recyclables including mixed paper and cardboard.

Jurisdiction Compliance with the Notification Requirement of Noncompliant Commercial Businesses and Multi-Family Complexes

As outlined in PRC section 42649.3 (d), a jurisdiction's solid waste recycling program shall include education, outreach to, and monitoring of, businesses. A jurisdiction is also required to notify those businesses and multi-family complexes that are not in compliance with PRC section 42649.2. Below outlines Merced-Unincorporated's efforts to comply with the notification aspect of the MCR law.

Facts and Observations:

- JCU staff inquired what Merced-Unincorporated's efforts were in notifying noncompliant businesses and multi-family complexes. Merced-Unincorporated shared with JCU that notifications of noncompliance were not given in 2012, 2013, 2014, or 2015.
- Merced-Unincorporated has reported that on October 18, 2017 they mailed notifications of noncompliance and self-certification forms to businesses and multi-family complexes serviced by Waste Management. On November 2, 2017 Waste Management followed up and mailed educational brochures to noncompliant customers. In early November 2017, Merced-Unincorporated reported they mailed notification of noncompliance, self-certification forms, and educational brochures to Gilton's noncompliant businesses and multi-family complexes. The effects of this effort on participation were not provided to JCU as of the preparation of this staff report.

In summary, until recently Merced-Unincorporated has not notified noncompliant MCR businesses and multi-family complexes of the requirement to participate in Merced-Unincorporated's MCR program.

Solid Waste and Recycling Facility Facts and Observations

Commercial businesses and multi-family complexes are not serviced through separate routes, in other words one truck picks up from both locations comingling the materials. Additionally, Merced-Unincorporated and incorporated areas of Merced County are not serviced through separate routes. This makes it difficult for JCU staff to discern the source of specific materials/contamination within the loads observed at the facility(s).

- Staff visited the Highway 59 Disposal Site. JCU staff observed a waste load at the facility's active face containing approximately 30-40 percent recyclables, primarily cardboard. The Highway 59 Disposal Site also operates as a transfer station for recyclables; however, recycle loads were not observed due to the timing of when loads were dumped and when JCU staff was able to be at the facility.
- Staff visited the Gilton Resource Recovery and Transfer Facility in Modesto. Staff found that waste loads do not undergo mixed waste processing before being transferred to the designated disposal facility. Gilton informed JCU staff that commingled recycling loads undergo material recovery but at the time of staff's visit, this activity was not observed. JCU staff inquired with the Department's field inspection staff regarding observations they have made of the facilities operations. JCU staff learned that the field inspector has seen the sort line running, however, only to separate cardboard.

Conclusions:

The participation rate for Merced-Unincorporated was determined to be 7.3 percent of businesses and 2.5 percent of multi-family complexes subject to MCR. JCU staff, through field observations, identified 11 businesses that prepare recyclables for pick-up. These additional businesses increased the participation rate to 9.2 percent for businesses, no additional efforts by multi-family complexes were found during staff's field visit, therefore the participation rate remains 2.5 percent. Furthermore, Merced-Unincorporated did not notify all noncompliant businesses for years 2012-2015. Based on staff's field visit to Merced-Unincorporated and the data collected and discussed above, Merced-Unincorporated has not demonstrated that it has made all reasonable and feasible efforts to implement a program designed to recycle commercial waste from businesses or from multi-family complexes subject to the MCR law.

Jurisdiction Compliance with the Annual Reporting Requirement

Pursuant to PRC section 42649.3 (g) and CCR section 18838 (h) each jurisdiction is required to report the progress achieved in implementing the MCR law, including identification, monitoring, education, outreach, and if applicable, enforcement efforts. PRC section 42649.3 (g) requires the jurisdiction to include its progress in the Annual Report required by PRC section 41821. Below is a detailed analysis of Merced-Unincorporated's reported efforts and includes reporting deficiencies which lead to the Department's determination of good faith effort or lack thereof.

As noted earlier, the RWA submits one Annual Report on behalf of all its member jurisdictions, including Merced-Unincorporated. JCU found that within the Annual Reports, the RWA reported little to no MCR data for Merced-Unincorporated. Merced-Unincorporated reported to JCU staff that identification, monitoring, and education and outreach progress was not submitted to RWA for reporting. Merced-Unincorporated explained that this failure to report was due to

limited County staffing resources. RWA reported to JCU staff that it annually requested information from haulers and reported on behalf of Merced-Unincorporated, however JCU staff could not find documentation of these efforts in the Annual Reports.

Summary: JCU conducted an analysis of Merced-Unincorporated's 2012, 2013, 2014, and 2015 Annual Reports and prepared a chart of its findings regarding the information reported in Merced-Unincorporated's Annual Reports for the years covered by this review. The 2016 Annual Report is currently under review by LAMD and was not considered in this staff report.

	Review Period				Additional Data
	2012	2013	2014	2015	2017**
MCR Businesses	Not reported	Not reported	Not reported	Not reported	555
MCR Businesses Recycling	7	Not reported	Not reported	Not reported	54
MCR Businesses Not Recycling	Not reported	Not reported	Not reported	Not reported	501
MCR Multi-Family	Not reported	Not reported	Not reported	Not reported	80
MCR Multi-Family Recycling	Not reported	Not reported	Not reported	Not reported	2
MCR Multi-Family Not Recycling	Not reported	Not reported	Not reported	Not reported	78

***2017 data reflects the data reported by Merced-Unincorporated in response to JCU's inquiry and includes the additional data collected through staff's field observations.*

- **Identification**

A jurisdiction is required to identify businesses that dispose of four (4) or more cubic yards of commercial solid waste per week and multi-family residential complexes of five (5) units or more (CCR section 18838 (a)(2)). The jurisdiction must report its progress in identifying these businesses in its Annual Report. As indicated by the above chart:

- Within the 2012, 2013, 2014 and 2015 Annual Reports, Merced-Unincorporated did not identify the total number of commercial businesses and multi-family complexes subject to MCR. In response to LAMD's request for additional information regarding the 2012 Annual Report, Merced-Unincorporated reported 400 businesses/multi-family complexes and 22 schools subject to MCR. In response to LAMD's 2013 inquiry, Merced-Unincorporated reported 400 businesses and 22 schools subject to MCR, and the number of multi-family complexes was unknown. Merced-Unincorporated reported that Waste Management and Gilton provide quarterly reports but do not break reports out by business and multi-family complex accounts. In 2014 and 2015, no additional information was provided to LAMD.
- In the 2012 Annual Report, seven (7) schools within Merced-Unincorporated were reported to be recycling and most large generators in Merced-Unincorporated recycle through third-party recyclers. No further information was provided in the Annual Report.

- In 2017, when JCU inquired about identification:
 - Merced-Unincorporated informed JCU staff that identification was not done during 2012-2015.
 - As part of JCU's request for data on the jurisdictions 2017 MCR program efforts, Merced-Unincorporated provided documentation from their haulers. Through JCU staff's analysis staff calculated the service levels for the businesses and multi-family complexes within Merced-Unincorporated.
- **Monitoring**

A jurisdiction is also required to monitor businesses and multi-family complexes subject to the MCR law to determine whether they are recycling (CCR section 18838 (a)(2)) and report on those efforts in the Annual Report. The following was reported within the Annual Reports:

 - In the 2012, 2013, 2014, and 2015 Annual Reports, no monitoring of businesses and multi-family complexes was reported for Merced-Unincorporated. In response to LAMD's request for additional information regarding the 2012 Annual Report, Merced-Unincorporated reported that of the 400 businesses/multi-family complexes subject to MCR, 66 businesses/multi-family complexes were recycling; of the 22 schools subject to MCR, six (6) were recycling. In response to LAMD's 2013 inquiry, Merced-Unincorporated reported that of the 400 businesses subject to MCR, 18 were recycling and of the 22 schools subject to MCR, six (6) were recycling. The total number of multi-family complexes recycling was reported as unknown. Waste Management and Gilton provide quarterly reports but do not break reports out by business and multi-family complex accounts. In 2014 and 2015, no additional information was provided to LAMD.
 - In 2017, when JCU inquired about monitoring:
 - Merced-Unincorporated informed JCU staff that monitoring was not done during 2012-2015.
 - In May 2017 in response to JCU's Request for Information, Merced-Unincorporated reported that monitoring is done by utilizing customer account lists from the franchise haulers to track which accounts are participating or not participating in the program. Merced-Unincorporated provided lists regarding MCR accounts recycling serviced by franchise haulers, American Recycling (third-party recycler), and accounts known to be self-hauling recycling. Although data was provided for 2017, there is no previous data for 2012-2015 to allow for any trend analysis of participation. Merced-Unincorporated also reported it is working to determine those entities that subscribe to additional third-party recyclers operating within the jurisdiction. No data was provided regarding other third-party recyclers as of the preparation of this report. Without this information, JCU staff was unable to determine whether third-party recyclers is an effective part of Merced-Unincorporated's MCR program.
 - On October 18, 2017, Merced-Unincorporated mailed a self-certification form to gather monitoring data to noncompliant Waste Management customers. On November 3 and 6, 2017, the form was mailed to noncompliant Gilton customers. Merced-Unincorporated is currently entering the information received from the returned forms. As of November 2, 2017, 6 of the 68 multi-family forms and 33

of the 384 commercial business forms sent to Waste Management customers were returned. Merced-Unincorporated has not specified how it will follow-up with those that do not respond. Merced-Unincorporated did not provide data on the effect this effort has had on the MCR program.

- **Education and Outreach**

About the Efforts:

For the reporting period of 2012-2015, print education and outreach efforts was reported. Within the response to JCU's staff 2017 inquiry, Merced-Unincorporated reported on print and electronic education and outreach in response to JCU's inquiry in 2017.

Facts and Observations:

Merced-Unincorporated reported the following education and outreach efforts in its Annual Reports:

- In the 2012 Annual Report, no education and outreach efforts were reported for Merced-Unincorporated.
- Within LAMD's 2012 and 2013 Annual Report staff notes, Merced-Unincorporated reported that Gilton updated its website to provide information on MCR and Waste Management sent out an informational flyer to 400 MCR businesses.
- In the 2013 Annual Report, it was reported that Waste Management mailed educational flyers to County businesses that met the MCR threshold. When asked, Merced-Unincorporated provided documentation of this effort.
- In the 2014 and 2015 Annual Report, no education and outreach efforts were reported for Merced-Unincorporated.
- In 2017, when JCU inquired on education and outreach efforts:
 - Merced-Unincorporated reported that on November 2, 2017, Waste Management mailed an educational brochure to its noncompliant customers. On November 3 and 6, 2017, Merced-Unincorporated mailed an educational brochure to Gilton's noncompliant businesses and multi-family complexes. Merced-Unincorporated reported that the educational brochures would be mailed at least annually and may be distributed more often through Chambers of Commerce and Realtors Associations to multi-family property management companies.
 - Merced-Unincorporated reported to JCU staff that an educational mailer and self-certification survey was mailed at the beginning of the MCR program by the RWA and provided documentation to support this effort. This effort was not reported in the Annual Report.
 - Merced-Unincorporated reported that the Merced County website provides a link to the RWA's main website and the County's recycling-specific website, "Merced Recycles", which both provide MCR information. JCU staff reviewed Merced County's website and was able locate a link to "Merced Recycles" but was unable to locate a link to the RRWA's main website.

- **Enforcement (Optional)**

Merced-Unincorporated did not indicate in its 2012, 2013, 2014, and 2015 Annual Reports that it elected to include enforcement as part of their implementation of the MCR law. As part of JCU's 2017 inquiry, Merced-Unincorporated did not report any enforcement authority currently within Merced-Unincorporated's ordinances. Accordingly, JCU has not considered enforcement in its analysis.

Conclusions:

Based upon the facts and observations above, Merced-Unincorporated has not made all reasonable and feasible efforts to identify, monitor, and report complete information on an annual basis regarding the businesses and multi-family complexes that are subject to the MCR law. Merced-Unincorporated provided print education and outreach for 2012 and 2013 and provided documentation to support these efforts, as well as provided online education for 2012-2015. Based on the facts and observations above, Merced-Unincorporated has complied with the education and outreach reporting requirements for 2012-2015.

In addition to the observations and conclusions described above, the Department also evaluated the factors in PRC section 42649.3 (i)(1)-(7)¹. The following is a summary of staff's analysis of the factors, and Merced-Unincorporated's efforts:

PRC section 42649.3 (i)(1)-(7) Factor	Staff's Consideration	Staff's Finding
(1) Extent to which businesses have complied with PRC section 42649.2, including information on amount of disposal being diverted (if available) and the number of businesses that are subscribing to service.	For 2017, Merced-Unincorporated had a 7.3 percent participation rate for businesses and 2.5 percent for multi-family complexes. Through JCU staff's field observations, additional businesses were found to be recycling which increased Merced-Unincorporated's participation rate for businesses to 9.2 percent. The multi-family complex participation rate remains at 2.5 percent.	Does not demonstrate good faith effort.
(2) The recovery rate from the material recovery facilities that are utilized by the businesses.	A request was made of Merced-Unincorporated and the haulers for information regarding the recovery rate for the material recovery facilities utilized by the businesses. The requested data was not provided.	Does not demonstrate good faith effort.

¹ In determining whether Merced-Unincorporated made a good faith effort to implement its selected commercial recycling program, the Department may consider, but is not limited to, the factors presented in PRC section 42649.3 (i)(1)-(7).)

(3) The extent to which the jurisdiction is conducting education and outreach.	Merced-Unincorporated has provided documentation supporting its efforts to provide education and outreach to covered businesses during 2012-2015. Merced-Unincorporated recently updated its educational brochure to reflect their current MCR program.	Supports a demonstration of a good faith effort.
(4) The extent to which the jurisdiction is monitoring businesses, and notifying those businesses that are out of compliance.	Merced-Unincorporated did not provide documentation supporting the efforts taken to implement monitoring and notifying those businesses that were out of compliance in 2012-2015. JCU staff found that in May 2017 Merced-Unincorporated began monitoring. No documentation was provided to reflect the impact the current efforts have had on the participation rate of businesses and multi-family complexes required to participate in the MCR program.	Does not demonstrate good faith effort.
(5) The availability of markets for collected recyclables.	The jurisdiction is not limited by geography or infrastructure to markets any more than other jurisdictions in the State.	Is not a consideration.
(6) Budgetary constraints (Note: PRC section 42649.6 allows a jurisdiction to charge and collect a fee from a commercial waste generator in order to recover the jurisdiction's cost incurred in complying with MCR.	Merced-Unincorporated informed JCU staff that it had limited staffing and funding during 2012-2015, however Merced-Unincorporated notified JCU staff in October 2017 that funding had been approved for additional staff and MCR mailers.	Is not a consideration.
(7) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.	Merced-Unincorporated is not a rural community.	Is not a consideration.

Communications and Notification History

March 30, 2017, LAMD notified Merced-Unincorporated that an independent review of Merced-Unincorporated's waste management programs was necessary (Attachment 1).

March 30, 2017, JCU staff initiated the 60-day conferring process required by PRC Section 41825 (Attachment 2).

November 8, 2017, the Department mailed the 30-Day Notice of Intent to Issue the Unincorporated County of Merced a Compliance Order for Failure to Implement the Mandatory Commercial Recycling (MCR) law (Attachment 5).

Findings

Based on a review of Merced-Unincorporated's MCR program and reporting, JCU staff finds that Merced-Unincorporated has not demonstrated that it has made all reasonable and feasible efforts to comply with the requirements of the MCR law (PRC 42649, et al.). In summary:

- Merced-Unincorporated did not implement a commercial solid waste recycling program that is designed to divert commercial solid waste from businesses subject to PRC section 42649.2. Staff found a lack of recycling bins present at MCR businesses and multi-family complexes, substantial recyclables mixed in with the waste collected, and a lack of documentation to support other efforts as discussed within this analysis. This finding is supported by the 7.3 percent participation rate for businesses and 2.5 percent participation rate for multi-family complexes in the City's commercial recycling program.
- Merced-Unincorporated staff informed JCU staff that the required notification of businesses and multi-family complexes of their noncompliance with the MCR law was not implemented until October/November 2017. Results from Merced-Unincorporated's monitoring effort as of November 2, 2017 indicate approximately an eight (8) percent response from businesses and nine (9) percent response from multi-family complexes. Without complete data, JCU staff is unable to determine whether this is an effective part of Merced-Unincorporated's MCR program.
- Merced-Unincorporated's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law. Follow-up inquiries by LAMD and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that Merced-Unincorporated made all reasonable and feasible efforts to implement the following components of their program:
 - Identification
 - Monitoring

Options for Consideration

1. Find that Merced-Unincorporated is not complying with the MCR law as noted above and,
 - a. Approve the attached Compliance Order as written, or
 - b. Approve the attached Compliance Order with alternate or additional language or conditions.
2. Find that Merced-Unincorporated has achieved a Good Faith Effort and is adequately complying with the MCR law and not issue the attached Compliance Order.

3. Find that Merced-Unincorporated is in compliance with the MCR law and not issue the attached Compliance Order.

Staff Recommendation

Department staff recommends Option 1: Find that Merced-Unincorporated is not complying with the MCR law and approve the attached Compliance Order as written. This recommendation is based on the findings presented within this report which support that Merced-Unincorporated has not complied with, or made a good faith effort to comply with, the MCR law.

The proposed Compliance Order CO 017-005 (Attachment 6) includes the following conditions and implementation schedule:

- Merced-Unincorporated shall work with Department staff to determine the MCR gaps and develop a Local Implementation Plan (LIP) to improve, expand, or implement new MCR programs and/or efforts.
- Merced-Unincorporated shall develop and submit to the Department a fully executed LIP by February 28, 2018.
- Merced-Unincorporated will fully implement the programs and/or efforts in the LIP by July 31, 2018.
- A monitoring/“oversight” period of one year from August 1, 2018 through January 31, 2019. The Department uses this time to ensure Merced-Unincorporated has continued implementation of the programs identified in the LIP.
- Merced-Unincorporated will submit quarterly status reports based on the calendar year. These status reports shall use the Department’s electronic reporting format. Merced-Unincorporated will also attach any required documentation necessary to support their efforts to implement the LIP and Compliance Order.

The Compliance Order requires the Department to hold a public hearing following the term of the compliance schedule to determine whether or not Merced-Unincorporated has complied with all of the conditions of the Compliance Order.

The Compliance Order specifies that, at any time, any failure of Merced-Unincorporated to comply with any part of the Compliance Order may result in an earlier public hearing and fines of up to \$10,000 per day. Likewise, a public hearing could be scheduled earlier if Merced-Unincorporated complies with the Compliance Order ahead of schedule.

ATTACHMENTS

1. March 30, 2017 LAMD notified the Unincorporated County of Merced that an independent review of the Unincorporated County of Merced’s commercial waste management program was necessary
2. March 30, 2017 Unincorporated County of Merced’s Notice of 60-Day Conferring Period for Potential Compliance Enforcement
3. Photo Report for Merced-Unincorporated
4. October 2017, Map of Field Visit Data
5. November 8, 2017 30-Day Notice of Intent to Issue the Unincorporated County of Merced a Compliance Order for Failure to Adequately Implement and meet the Requirements of the

Mandatory Commercial Recycling Law

6. Proposed Compliance Order CO 017-005
7. Request for Action for Consideration of the Issuance of Compliance Order
CO 017-005 to Unincorporated County of Merced

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